



ORDER BELOW EXH.65

This is an application filed by the Plaintiff as per Order 26 Rule 9 and 10 for appointment of the court commissioner. Perused the application and reply (Exh.68). Heard the learned counsel for both parties at length.

2. It is the contention of the plaintiff that suit properties are house properties of plaintiffs and defendants. There are five houses where plaintiff nos.1 and 2 as well as defendant nos.1, 6 & 7 are residing separately in each house. But defendants denied this fact in their written statement. Plaintiffs have filed present suit for declaration and perpetual injunction. There is no electricity to the houses of plaintiff nos.1, 2 and defendant nos.6 and 7. It is necessary to bring true facts before the court. The report of court commissioner is necessary for just decision of the suit. Plaintiffs have filed present suit for collection of evidence. Therefore, plaintiffs prayed for appointment of court commissioner.

3. Vide reply (Exh.68), defendants have resisted the instant application. They stated that plaintiff nos.1 and 2 as well as defendant nos.6 to 7 are not concerned with suit properties. Plaintiffs have filed the present application for collection of evidence. They are not in possession of any house. All the suit properties are in the possession of defendant nos.1 to 5 and they are having electricity connections. Hence, they prayed for rejection of the application .

4. I have carefully gone through the record of the case and also gave thoughtful consideration to the submissions made by both learned

counsels. Plaintiffs are relied on the judgments of Hon'ble Kerala High Court in case of **Payani Achuthan Vs. Chamballikundu Harijan Fisheries development Co-op. Society A.I.R.1996 Kerala 276** and Judgment of Hon'ble Bombay High Court in case of **Bhupendra Bhagwat Turkar Vs. Homraj Zituji Meshram 2017 (3) All MR 635**. With due respect, both the case laws cited by plaintiffs are not applicable to the present case in hand as the present suit is filed for declaration and permanent injunction. There is no boundary dispute in the present case. The plaintiffs have to prove their own case by leading evidence.

5. However, it is admitted position that court commissioner can not be appointed for collection of evidence. By way of this application the plaintiff is trying to collect the evidence. This is not fit case to appoint court commissioner. The application is devoid of merits. Hence, in sequel I pass following order.

ORDER

The application stands rejected.

Place : Dahiwadi.
Date : 04/09/2023

(S. S. Gadve)
Jt. CJJD